

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1103

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

To be argued by
JONATHAN J. SILBERMANN

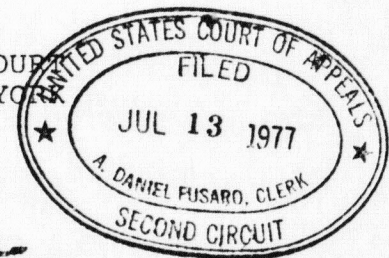
-----X
:
UNITED STATES OF AMERICA,
:
:
Appellee,
:
:
-against-
:
:
STEVEN STAVREDES,
:
:
Appellant.
:
-----X

Docket No. 77-1103

B
Pg 5

APPENDIX FOR APPELLANT
STEVEN STAVREDES

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK



MARTIN ERDMANN, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
STEVEN STAVREDES
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

JONATHAN J. SILBERMANN,

Of Counsel.

PAGINATION AS IN ORIGINAL COPY

SEAL
JUDGE MAGISTRATE Assigned U.S. 0715
207 1
FELONY Fel X
Case No. 11-976
No. of Defs 6
JUVENILE
WEINSTEIN, J.
16-682
76 690
U.S. MAG. CASE NO.

U.S. TITLE SECTION
21-622
OFFENSES CHARGED
Violation of Meat Inspection Act
and did accept gratuities, etc.
(Govt employee)
ORIGINAL COUNTS 6
CLOSED
SUPERSEDING COUNTS

BAIL - RELEASE
AMT
Set
Date
Bail Not Made
Status Changed (See Docket)
Fugitive
Pers Recog
PSA
10% Deposit
Surety Bond
Collateral
3rd Prty Cust
Other

II. KEY DATES & INTERVALS
ARREST or U.S. Custody Began
Summons Served
First Appearance
INDICTMENT Information 11-9-76
High Risk Date
Indict. Waived
In Charging District
ARRAIGNMENT 11/16/76
1st Plea
Final Plea
TRIAL
Voor Dire 1/24/77
Trial Began 1-24-77
Trial Ended 1/25/77
SENTENCE 1-28-77
Disposition of Charges
Convicted
Acquitted
Dismissed
On All Charges
On Lesser Offense(s)
WOP
WP
On Government's Motion

MAGISTRATE
DATE
INITIAL/NO.
Search Warrant Issued
Summons Issued
Arrest Warrant Issued
COMPLAINT
OFFENSE (In Complaint)
INITIAL APPEARANCE DATE
PRELIMINARY EXAMINATION OR REMOVAL HEARING
Date Scheduled
Date Held
Type Number
OUTCOME
DISMISSED
HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst. Samuel Dawson
ATTORNEYS Defense: CJA X Ret. Waived Self None / Other PD CD
C. John Prince
89-02 Sutphin Blvd.
Jamaica, Queens, 11435
658-5500
BEST COPY AVAILABLE

* Show last names and suffix numbers of other defendants on same indictment/information

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c) (d)
11-9-76		Before CHREIN Mag - Indictment filed	
11/16/76		Notice of Appearance filed.	
11/16/76		Before WEINSTEIN, J.- Case called. Deft & Counsel present. Deft advised of conflict of interest. Deft arraigned and enters a plea of not guilty. Pre-Trial conference held and concluded. Bail \$1,000.00 P.R.B. Trial set for 1/5/77 at 9:30 a.m.	
11/18/76		Notice of readiness for trial filed/	
1-5-77		Before Weinstein, J.- Case Called. Adj'd. to 1-7-77 at 9:30 A.M. for motions.	
1-7-77		Before Weinstein, J.- Case Called. Deft's motion to quash subpoenas is granted and denied as indicated. Trial set for 1-10-77 at 9:30 A.M.	
1-7-77		Notice of Motion for an order quashing subpoenas duces tecum received from Chambers filed.	
1-7-77		Memorandum of Law in Support of Motion of AAA Meat Provision, Inc., Borstein Brothers, Inc. and George Korn & Sons, Inc. to Quash Subpoenas duces tecum filed received from Chambers.	
1-10-77		Before WEINSTEIN J. - Case called & adj'd to 1-24-77	

DATE	DOCUMENT NO.	I. PROCEEDINGS (continued)	PAGE	O	V. EXCLUDABLE DELAY			
					Interval Between (a)	Start End Date (b)	LT Code (c)	Total Days (d)
1-12-77		Notice of motion filed, ret. Jan. 19, 1977, for an order pursuant to Rule 21(b) relating to the transfer on defts motion, of prosecution for an alleged offense committed in two or more districts, etc. (Southern Dist. 76 CR-1034 relates) and for Inspection, etc. (forwarded to Chambers)						
1/19/77		Before WEINSTEIN, J.- Case called. Deft & Counsel present. Motion to transfer argued and denied with leave to renew - so ordered.						
1.24.77		Before Weinstein, J.- Case Called. Deft. & Counsel present. Trial ordered and begun. Daily copy of transcript in forma pauperis is granted for deft. Submit order. Jurors were selected and sworn. Govt. rests. Motion reserved. Deft. rests. Deft. permitted to reopen case. Deft rests. Trial continued to 1.25.77 at 9:45 A.M.						
1-25-77		Stenographers transcript filed dated 1-24-77						
1-25-77		By Weinstein J - Order of sustenance filed (Lunch)						
1-25-77		Before WEINSTEIN J - case called - deft & counsel present - trial resumed - Govts rests - defts motion to reopen case is granted - deft rests - defts motion to dismiss the indictment is denied - Jury retires for deliberations - Jury returns and renders a verdict of guilty on each of counts 1 to 6 incl. Jury plled and discharged. Defts motion to set aside verdict is denied - bail contd - sentence set for Jan. 28, 1977 at 9:30 am.						
1.26.77		Voucher for Compensation for Expert Services filed and forwarded to Washington for payment.						
1.26.77		Stenographer's Transcript dated January 25, 1977 filed.						
1.28.77		Before Weinstein, J.- Case Called. Deft. & Counsel present. Deft. sentenced to 18 months imprisonment on each of counts 1, 2, 3, 4, 5, & 6 to run concurrent. Sentence to run concurrent with any sentence imposed in the Southern District of New York. Sentence stayed pending appeal. Bail continued.						
1.28.77		Judgment and Commitment filed. Certified Copies to Marshal and Probation.						
2-28-77		Notice of appeal filed - Docket entries and duplicate of Notice MAILED TO the court of appeals.						
3.9.77		Order filed received from the Court of Appeals that the appeal be docketed and the record filed on or before March 11, 1977.						
5-16-77		Scheduling order filed received from the court of appeals that the record on appeal be filed on or before June 13, 1977.						
5/20/77		Sten's transcript dtd 1/28/77 filed.jlj						
6.13.77		Stenographer's Transcript dated January 10th, 1977 filed--						gp
6.13.77		Stenographer's Transcript dated January 7th, 1977 filed!						gp
6.13.77		Stenographer's Transcript dated November 16th, 1977 filed.						gp

FINE AND RESTITUTION PAYMENTS

DATE	DEBT NUMBER	CD NUMBER	DATE	RECEIPT NUMBER	CD NUMBER

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UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

STAVREDES, Steven

76
Yr.

690
Docket No.

1
Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
	(Document No.)	(a)	(b)	(c)	(d)
6.13.77	Record on Appeal certified and hand delivered to the Court of Appeals by Joan Gill.				gp
	A TRUE COPY ATTEST DATED <u>6-13-77</u> 19<u>77</u> LEWIS ORCEL CLERK BY <u>[Signature]</u> DEPUTY CLERK				

D:sm
#763,486

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X 76 CR 690
UNITED STATES OF AMERICA

I N D I C T M E N T

- against -

Cr. No. _____
(T. 21, U.S.C., §622)

STEVEN STAVREDES,

Defendant.

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ NOV 9 1976 ★

----- X
THE GRAND JURY CHARGES:

TIME A.M. _____
P.M. _____

INTRODUCTION

1. The Federal Meat Inspection Act, enacted on December 15, 1967 as Title I of the Wholesome Meat Act requires the Secretary of Agriculture to provide for the inspection of establishments where meat and meat food products are processed.

2. At all times relevant to this Indictment, the Paulus Packing Co., Incorporated, located at 179 Fort Green Place, Brooklyn, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program, pursuant to the Federal Meat Inspection Act.

3. At all times relevant to this Indictment, the Summit Packing Corporation, located at 174 Fort Green Place, Brooklyn, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program, pursuant to the Federal Meat Inspection Act.

4. At all times relevant to this Indictment, the George Korn and Sons, Incorporated, located at 639 Atlantic Avenue, Brooklyn, New York, was engaged in interstate

(1)

commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program, pursuant to the Federal Meat Inspection Act.

5. At all times relevant to this Indictment, the Jacob Zucker, Incorporated, located at 178 South Elliott Place, Brooklyn, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program, pursuant to the Federal Meat Inspection Act.

6. At all times relevant to this Indictment, the Bornstein Brothers, Incorporated, located at 172 South Elliott Place, Brooklyn, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program, pursuant to the Federal Meat Inspection Act.

7. At all times relevant to this Indictment, the AAA Meat Provisions, Incorporated, located at 914 Pacific Street, Brooklyn, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program, pursuant to the Federal Meat Inspection Act.

8. At all times relevant to this Indictment, the defendant STEVEN STAVREDES was an inspector, officer and employee of the United States Department of Agriculture, Meat and Poultry Inspection Program, authorized to perform the duties required by the Federal Meat Inspection Act of 1967.

COUNT ONE

From on or about and between the 13th day of May, 1973 and the 16th day of September, 1973, both dates being approximate and inclusive, within the Eastern District of New York, the defendant STEVEN STAVREDES, unlawfully, wilfully and knowingly did receive and accept from Paulus Packing Co., Incorporated, money and other things of value, namely, approximately Thirty Dollars (\$30.00) weekly. (Title 21, United States Code, Section 622).

COUNT TWO

From on or about and between the 13th day of May, 1973 and the 1st day of September, 1973, both dates being approximate and inclusive, within the Eastern District of New York, the defendant STEVEN STAVREDES, unlawfully, wilfully and knowingly did receive and accept from Summit Packing Corporation, money and other things of value, namely, approximately Thirty Dollars (\$30.00) weekly. (Title 21, United States Codes, Section 622).

COUNT THREE

From on or about and between the 6th day of January, 1974 and the 4th day of July, 1974, both dates being approximate and inclusive, within the Eastern District of New York, the defendant STEVEN STAVREDES, unlawfully, wilfully and knowingly did receive and accept from George Korn and Sons, Incorporated, money and other things of value, namely, approximately Twenty-Five Dollars (\$25.00) weekly. (Title 21, United States Code, Section 622).

COUNT FOUR

From on or about and between the 6th day of January, 1974 and the 6th day of July, 1974, both dates being approximate and inclusive, within the Eastern District of New York, the defendant STEVEN STAVREDES, unlawfully, wilfully and knowingly did receive and accept from Jacob Zucker, Incorporated, money and other things of value, namely, approximately Twenty-Five Dollars (\$25.00) weekly. (Title 21, United States Code, Section 622).

COUNT FIVE

From on or about and between the 6th day of January, 1974 and the 6th day of July, 1974, both dates being approximate and inclusive, within the Eastern District of New York, the defendant STEVEN STAVREDES, unlawfully, wilfully and knowingly did receive and accept from Bornstein Brothers, Incorporated, money and other things of value, namely, approximately Twenty-Five Dollars (\$25.00) weekly. (Title 21, United States Code, Section 622).

COUNT SIX

From on or about and between the 6th day of July, 1974 and the 4th day of January, 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendant STEVEN STAVREDES, unlawfully, wilfully and knowingly did receive and accept from AAA Meat Provision, Incorporated, money and other things of value, namely, approximately Fifty Dollars (\$50.00) weekly. (Title 21, United States Code, Section 622).

A TRUE BILL.

FOREMAN

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

Charge

1
2 THE COURT: I am going to tell you what the law
3 is, ladies and gentlemen. I want you to follow my
4 instructions. You will decide the facts. I have
5 nothing to do with the facts. I have no view as to the
6 guilt or innocence of this defendant. If I have said
7 anything or done anything that leads you to believe I
8 have a view, put it out of your mind. My only desire
9 is to see that both sides get a fair and impartial
10 trial.

11 I believe in a number of instances material was
12 stricken. You will ignore that material. Consider the
13 stipulations and the documents and the oral testimony.
14 The fact that the prosecution is brought in the name
15 of the United States is of no moment at all. Every-
16 body is equal in this court. Nobody is entitled to
17 any sympathy. Nobody is entitled to any favor. The
18 indictment is merely an accusation. It is entitled to
19 no weight at all. It is not evidence.

20 This defendant is presumed to be innocent,
21 because he has pled not guilty. That presumption of
22 innocence remains throughout the trial and throughout
23 your deliberations and must be considered by you. The
24 Government has the burden of proving him guilty beyond
25 a reasonable doubt with respect to each element of the

Charge

1
2 offense that is charged. He doesn't have to submit
11 3 any evidence at all. He is presumed to be innocent.
4 The law does not compel a defendant to testify in a
5 case. No inference of any kind adverse to this
6 defendant may be drawn from the fact that he did not
7 testify. Ignore that. Is that clear? Do not consider
8 that aspect at all. The burden of proof beyond a
9 reasonable doubt lies on the Government throughout the
10 trial.

11 A reasonable doubt means a doubt sufficient to
12 cause a prudent person to hesitate to act in the most
13 important affairs of his or her life. Obviously finding
14 a defendant guilty of a crime is a serious matter and
15 you will consider that in determining whether he is
16 guilty or not. But if you should find that beyond
17 a reasonable doubt that he was proven to be guilty, you
18 should find him guilty and not be swayed by any
19 consideration of sympathy or by consideration of what
20 might happen to him. You will have to rely on your own
21 common sense in evaluating all of the evidence.

22 (Continued next page)
23
24
25

1
2 THE COURT: (Cont'd.) This defendant is
3 charged with six separate crimes or counts and they
4 arise from payments alleged to have been received
5 by him during the years 1973 in part and '74 and
6 '75 in part.

7 They relate to the Federal Meat Inspection
8 Act, which was intended to provide for inspection of
9 certain packing establishments, processing meat and
10 other food products.

11 Each of these separate crimes has to be
12 considered separately by you. You will be asked
13 to bring in a verdict of guilt or innocence on each
14 of the counts. If you wish, I will send in the
15 indictment so that you can see these counts laid out
16 and that will help you remember what I said.

17 So you can find him guilty on all, not guilty
18 on all, guilty on some, not guilty on some, depending
19 on how you find the facts.

20 There was, in addition, in this case, evidence
21 of a number of acts which were not charged. You
22 remember the acts of taking in New York. They were
23 not charged in this indictment. They may be
24 considered by you as evidence of lack of mistake or
25 of a plan or of intent or of opportunity and

1 identity, but only on that issue.

2
3 You may not conclude from the fact that this
4 defendant took money, if he did take it, from other
5 meat packers in Manhattan that the defendant had a
6 bad character and therefore he took from these meat
7 packers in Brooklyn. That is not permitted.

8 And if he took from the Manhattan people but
9 did not take from the people he is charged with
10 taking from, you have to find him not guilty. Is
11 that clear?

12 Only of the charges he is being tried for
13 here. That is your problem.

14 You can use the other matters as evidence
15 to the limited extent that I indicated. You can,
16 of course, use the evidence that was submitted by the
17 defendant with respect to the fact that he did not
18 take on a number of occasions from other packers,
19 although the Government introduced some testimony
20 explaining that, based upon the time that the
21 investigation became public.

22 Well, whether you believe any of that and what
23 weight you should give to it is entirely up to you.

24 Now, the first count reads as follows:

25 "From on or about and between the 13th day

1 of May, 1973 and the 16th day of September, 1973,
2 within this District, that is, in Brooklyn, this
3 defendant Steven Stavredes, unlawfully, willfully
4 and knowingly did receive and accept from Paulus
5 Packing Company, Inc., money and other things of
6 value, namely approximately \$30 weekly."
7

8 The second count is the same except that it
9 charges that between May 13, 1973 and September 1,
10 1973, the defendant received \$30 weekly from
11 Summit Packing Corporation.

12 Similarly, the third charge is that between
13 January 6th and July 4th, 1974, he received \$25 a
14 week from George Korn and Sons, Inc.

15 Fourth count is that between January and
16 July '74, he received \$25 weekly from Jacob Zucker,
17 Inc.

18 Fifth count is that between January 1974 and
19 July 1974, he received from Bornstein Brothers, Inc.
20 \$25 weekly.

21 The sixth count is between July 6th, 1974 and
22 January 1975, he received from the AAA Meat
23 Provision, Inc. \$50 approximately.

24 The exact times and the exact amounts are not
25 critical. That is, if he took \$25 when he was

1 charged with 50 or took 30 when he was charged with
2 25, really doesn't make any difference. He would
3 still be guilty if you found other elements.
4

5 Now, the charge is a violation of Section
6 622 of Title 21 of the United States Code, which
7 reads as follows:

8 "Any meat inspector of the United States
9 who shall accept any money or other thing of value
10 from any person, firm or corporation, or officers,
11 agents or employees thereof, or shall receive from
12 any person, firm or corporation engaged in interstate
13 commerce, any gift, money or other thing of value,
14 given with any purpose or intent whatsoever, shall
15 be guilty of a crime."

16 So you have to find three elements. First,
17 that he was a person authorized by the United States
18 to perform meat inspection duties at these plants.
19 There does not seem to be any dispute about that.

20 Second, that the corporation was engaged in
21 interstate commerce in the United States and that
22 its meat was being inspected by employees of the
23 Department of Agriculture. There does not seem to
24 be any question about that.

25 Most of the meat comes from outside the

1
2 state, the testimony, I think, indicated, and these
3 corporations were engaged in interstate commerce if
4 they were buying meat from other states.

5 Third, and this is the critical point, you
6 have to decide that this defendant did accept money
7 from the particular corporations or their agents
8 involved in connection with or arising out of his
9 official duties.

10 The intent with which the money was given or
11 the intent with which it was received is irrelevant
12 in any finding of guilt. It is sufficient if the
13 money was given in connection with the meat inspection
14 program to this defendant as a meat inspector.

15 But you must find that he received the money
16 knowingly and willfully and purposefully and not by
17 any accident, mistake, inadvertence or misunder-
18 standing.

19 It is not a defense that the defendant was
20 not influenced in the performance of his work by
21 the payments or that he was a good and efficient
22 inspector. And he would have done the same thing
23 whether or not he was paid.

24 That is not a defense. It does not make a
25 bit of difference, however good he was or however

1
2 bad he was. That does not make any difference
3 either.

4 You are not here trying him for the efficiency
5 of his inspection duties. It does not make any
6 difference whether he was of estimable character in
7 the community, a good person generally.

8 The question is whether he deliberately took
9 money in connection with his job as a meat inspector.
10 You are going to have to determine the credibility
11 of these witnesses. You will consider the bias or
12 interest of the witness, his or her candor, the
13 intelligence as you observed it, the extent to which
14 it has been corroborated or contradicted, whether
15 there has been any change in the testimony and so on.

16 If you think a witness has lied, you can
17 ignore the testimony completely, but a witness may
18 be mistaken as to part and accurate as to part and
19 you will have to choose which part of which
20 witness's testimony you believe.

21 The chief Government witnesses were employees
22 or officers of corporations that were admitted
23 accomplices in the crimes charged and in other
24 crimes of giving money to Government employees. In
25 evaluating their testimony, you should view it with

1
2 caution and scrutinize it carefully.

3 Their association with criminal activities
4 may show defects in their own character which may
5 make them more likely to lie. They may also be
6 seeking to curry favor with the Government and receive
7 favorable treatment to avoid their own prosecution.
8 and punishment of their corporations because the
9 Government could put them out of business by taking
10 away their licenses and their inspection number.

11 There was evidence that they were not
12 criminally prosecuted.

13 Now, there is nothing wrong with the
14 Government using such testimony and whether you like
15 it or not is not the question. You are not trying
16 the Government for the way they handle witnesses.
17 Just consider it on credibility, not to punish the
18 Government or award anybody. That is not the issue
19 before you.

20 Do not give any greater weight to a witness
21 merely because he was a Government official. There
22 was one, at least, who testified, a number of them.
23 Treat them as any other witness.

24 Now, you remember the defendant also called
25 a character witness and a number of others who

1
2 might be considered character witnesses. You can
3 give as much weight as you wish to that evidence,
4 bearing in mind that evidence of good character when
5 considered with all the evidence in the case may
6 alone be sufficient to instill a reasonable doubt.

7 You have to consider all of the evidence in
8 the case. If a man is of good character, it is
9 undoubtedly less likely that he will be committing
10 crimes. You will consider that.

11 If you have any doubt about what the testimony
12 was, send in a note and I will try to find it with
13 the attorneys and we will read it to you. Obviously
14 we do not want to sit here and read everything over
15 again so be precise.

16 If you do not need it, do not ask for it. If
17 you want any or all of the documents, send in a note
18 and we will send them in. If you want any more help
19 on the rules of law, send in a note and I will be
20 glad to give it to you, although it seems to me
21 that in this case the issue as posed by the
22 argument and the evidence is relatively simple and
23 within the general experience that most of you
24 have with respect to your own lives.

25 Listen to each other carefully, respectfully.

2 If you think somebody else is right and you are
3 wrong, do not hesitate to change your opinion. But
4 remember, each of you is individually responsible
5 for the verdict and that verdict must be unanimous.

6 Your oath sums up your obligation and that is
7 without fear or favor to any person, you will well
8 and truly try the issues according to the evidence
9 and the law as I have just explained it to you.

10 Is there any objection to releasing the
11 alternates now?

12 MS. SHEPARD: No objection, your Honor.

13 MR. PRINCE: No, your Honor.

14 THE COURT: All right.

15 The four alternates are released. Let me
16 tell you, I don't want you to discuss this case
17 with anyone until the verdict is in. Is that clear?
18 After that you can do as you please. I want you to
19 take your things, the four alternates and leave the
20 building. Is that clear? Do not discuss the case
21 with anybody. You are through for the week. Your
22 jury service is complete.

23 All right. Will the four alternates please
24 get their things and leave?

25 Will the attorneys like to see me at the side

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MR. PRINCE: No, your Honor.

MS. SHEPARD: No, your Honor.

THE COURT: No objections?

MR. PRINCE: No objections.

THE COURT: No requests?

MR. PRINCE: No, your Honor. No requests to charge. I believe that your Honor has covered everything.

THE COURT: All right.

(Four alternates excused.)

THE COURT: Swear the Marshals, please.

(One male Marshal duly sworn by the Clerk of the Court.)

THE COURT: All right.

Retire and consider your verdict. ~~Don't allow~~

~~Do not~~ Do not allow the jury to go into the jury room until the alternates have left and all the papers and things are out.

THE MARSHAL: Yes, your Honor.

THE COURT: Do you want the charge sent in? That is, the indictment sent in? Will that help you?

JUROR NO. 1: Yes.

THE COURT: Any objection to that?

MS. SHEPARD: No objection.

THE COURT: All right.

327

Give me a copy. We will mark it and I will

send it in.

Do you have a copy?

MS. SHEPARD: We have one.

THE COURT: All right.

Mark that as a Court Exhibit.

THE CLERK: Court Exhibit 3.

THE COURT: Would you like to examine it?

MR. PRINCE: Yes. Thank you, your Honor.

MS. SHEPARD: Isn't that Court Exhibit 4? I

think there were three stipulations.

THE CLERK: They were marked as Government's

Exhibits.

MS. SHEPARD: I don't think so.

MR. PRINCE: I have no objection to this

indictment.

THE COURT: All right.

Mr. Clerk, see if the jury room is available.

Retire and consider your verdict, please,

ladies and gentlemen.

(Whereupon, at 12:45 o'clock p.m., the jury

retured to the jury room to deliberate and the

following occurred in their absence.)

THE COURT: All right. I would suggest you

12 1 you stay around a little while and see if they want
2 the documents. Just get them ready.

3 Lunch will be in in about ten minutes and then
4 you can go out, if you'd like.

5 (Recess taken.)

6 (The following occurred in the absence of
7 the jury at 1:p.m.)

8 THE COURT: All right.

9 Are these the documents we sent in this
10 morning?

11 MR. PRINCE: Yes, your Honor.

12 THE COURT: You've checked them? Both checked
13 them?

14 MS. SHEPARD: Yes.

15 MR. PRINCE: Yes.

16 THE COURT: They are satisfactory?

17 MS. SHEPARD: Yes, your Honor.

18 MR. PRINCE: Yes, your Honor.

19 THE COURT: All right.

20 Give them to the Marshal and have him give them
21 to the jury.

22 All right. You might as well go to lunch
23 because they have their sandwiches. Let the Clerk
24 know where you'll be, please.

25 MR. PRINCE: Thank you very much.

12a

MS. SHEPARD: Thank you.

2

THE COURT: Thank you.

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(Luncheon recess taken.)

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AFTERNOON SESSIONGP/ad 1
JPM

(The following occurred in the absence of the jury at 2:50 p.m.)

THE COURT: May I see the note, please? You've all had a chance to read it, have you?

MR. GOULD: Yes, your Honor.

THE COURT: Bornstein, the application for stamp. What date?

MR. GOULD: Your Honor, the answer to the first two questions we think it's best to read -- just read from the testimony and that's the only thing that responds to that, read them the testimony and see if that satisfies the first two questions.

MR. PRINCE? First --

THE COURT: Stand there, please.

MR. PRINCE: They sent this with the note. Regarding question number --

THE COURT: Stand there, please.

MR. PRINCE: Believe me, your Honor, I mean, I can't -- regarding question number 1, it is our opinion that the seal was given to Bornstein prior to 1968.

MR. GOULD: The exact testimony is 15 to 16 years ago I think.

MR. PRINCE: Okay.

THE COURT: When were these seals first given

1 out?

2 MR. PRINCE: They were given out --

3 MR. GOULD: There is no testimony in the record
4 as to any of that, your Honor.

5 THE COURT: The act was first effective when?

6 MR. PRINCE: But there were seals by the Federal
7 Government prior to this act.

8 THE COURT: I see.

9 MR. GOULD: That is correct. His testimony, I
10 think, is the best thing to give them.

11 THE COURT: All right. If that's what you want,
12 that's what we'll do. Page 133, lines 17 to 25.

13 MR. GOULD: Right.

14 THE COURT: The second question is, were inspec-
15 tors assigned prior to 1968 to Bornstein?

16 MR. GOULD: The same part of the transcript,
17 your Honor.

18 MS. SHEPARD: The same.

19 MR. PRINCE. We know that in -- were there
20 federal inspectors --

21 THE COURT: We have to rely on the evidence.

22 MR. PRINCE. Well, we know that there were
23 federal inspectors. Now whether or not they were called
24 inspectors or whatever they were called, Department of
25 Agriculture people, but we know that there were people

of that nature.

THE COURT: I'll just read the same testimony.

MR. GOULD: The same testimony, your Honor.

MS. SHEPARD: Yes.

THE COURT: Defendant Exhibit H.

MR. GOULD: Your Honor, having -- those are

Mr. Dawson's notes and Mr. Dawson stated that he took

those notes in May of 1976. There is nothing in the

record as to the date. We do have it marked, the page

where it was introduced in evidence.

MR. PRINCE: There is no record in Mr. Dawson's

diary and if it's that important --

THE COURT: No. I will not supplement the

record.

MR. GOULD: We have the page located where it

was put into evidence.

THE COURT: What is it?

MS. SHEPARD. 148

MR. GOULD: 148, your Honor.

MS. SHEPARD: In fact, 147 is where it starts.

MR. GOULD: 147 through 148.

THE COURT: 147. May I see it, please?

MR. PRINCE: Excuse me. Yes.

MR. GOULD: There is no specific date there.

MR. PRINCE: July 22nd or 21st.

4

1

THE COURT: When did the -- the testimony indicates when the Grand Jury investigation began, didn't it?

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3

4

MR. GOULD: The testimony indicates that the first subpoenas were served in mid '75.

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MR. PRINCE: No. I'll tell you, I just saw it. The Grand Jury convened, forget -- you asked Grand Jury, right.

7

8

9

THE COURT: What does the record show?

10

11

MR. PRINCE: It was 3 days in May, Mr. Dawson said.

12

13

THE COURT: Is it in the record?

14

MR. PRINCE: I don't think there is anything in this record, no.

15

16

MR. GOULD: Grand Jury indictment came out in the record. It was January of '76.

17

18

THE COURT: No. There was some testimony about when the investigation became known.

19

MS. SHEPARD: In the Southern District.

20

21

MR. GOULD: Yes, but when the subpoenas were served in the Southern District mid '75, there was also testimony --

22

23

THE COURT: Does it say mid '75?

24

25

MR. GOULD: I think July was the date they gave. The rebuttal witnesses, today.

1 MR. PRINCE: But you folks brought that in,
2 didn't you, when you said when did you stop paying and
3 --

4 MS. SHEPARD: That's right, today, with the
5 rebuttal witnesses.

6 THE COURT: When was there an indication of when
7 the investigation began in the record?

8 MR. GOULD: In the record.

9 MS. SHEPARD: Today's rebuttal witnesses.

10 THE COURT: What did they say?

11 MS. SHEPARD: They said July of 1975 or the
12 summer of '75.

13 MR. PRINCE: One of them that I asked from said
14 that he had some knowledge of it in 1973.

15 MR. GOULD: No, your Honor. If you'll read the
16 record that was --

17 THE COURT: What -- show me the record.

18 MS. SHEPARD: It's today's. We don't have it
19 yet.

20 THE COURT: Oh, you don't have it.

21 MR. GOULD: But, your Honor, it was clear that
22 he was asked, you knew about it in '73 and he said,
23 no I didn't know about it in '73 and that this investi-
24 gation --

25 THE COURT: All right. Now, on Exhibit H,

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6 1 Defendant's number 30, what does that mean?

2 MR. PRINCE: That's Mr. Dawson's --

3 MR. GOULD: I think we both agree to the answer
4 to that is yes. Is that correct?

5 THE COURT: What is the question? I don't under-
6 stand the question. Were they inspecting Bornstein
7 prior to Exhibit H being drawn up? The answer is yes.

8 MR. GOULD: Ten years prior.

9 MR. PRINCE: According to -- yes.

10 THE COURT: The answer is yes?

11 MR. PRINCE: Yes.

12 MR. GOULD: Yes.

13 THE COURT: So as to the first question, I'll
14 read them lines 17 to 25 on page 133. As to the
15 second question, the same. As to the third question,
16 I'll read them pages 147 and 148 and tell them that the
17 evidence in the case which they may find bears on it,
18 indicates that there was investigations at least as of
19 July and the summer of '75. And as to the fourth
20 question, I'll say yes.

21 MR. PRINCE: --

22 MR. GOULD: They sent out other documents. We
23 have no idea.

24 MR. PRINCE: Let me see that, please.

25 MR. GOULD: Yes.

7 1 THE COURT: All right. That's all there is.

2 MR. PRINCE: Yes.

3 THE COURT: All right. I'll put on my robes
4 and we'll get the jury.

5 (Recess taken.)

6 (The following occurred in the absence of the
7 jury.)

8 THE COURT: All right. Bring in the jury,
9 please.

10 (Jury present.)

11 THE CLERK: Juror's note marked as Court's
12 Exhibit 4.

13 (So marked.)

14 THE COURT: The first question is, when an
15 application for the stamp was made by Bornstein, what the
16 date was. The record at page 133 reads as follows,
17 line 17.

18 "Question: Did your company apply to the
19 Department of Agriculture of the United States?

20 "Answer: Inspection?

21 "Question: Yes. Do you recall when that was?

22 "Answer: Around 15 or 16 years ago.

23 "Question: Was that inspection granted?

24 "Answer: Yes.

25 "Question: Were you receiving federal inspection

8 1 in 1974?

2 "Answer: Yes."

3 Does that answer that question?

4 JUROR NO. 1: No.

5 THE COURT: What's the question? I don't
6 understand.

7 JUROR NO. 5: The question was that in all
8 applications that I saw, the act of a federal stamp
9 was started in '67. Four or five of the companies
10 applied for their application in 1968. In the written
11 -- handwritten testimony before the Attorney General,
12 where Mr. Bornstein answers questions relative to
13 all the inspectors, in two instances he says ten years
14 ago he gave them money. My understanding was that
15 inspections didn't start until about '67 or '68. And
16 what our question was, was the Bornstein company being
17 inspected by federal inspectors prior to '68?

18 THE COURT: That's all I could tell you. He
19 said, before you, 15 to 16 years ago.

20 JUROR NO. 5: But the records that we have,
21 your Honor, we have them for five companies which shows
22 the application for the stamp being '68. The way I
23 understand the law was passed in '67. Something about
24 this stamp. The stamps were given prior to 1967?

25 THE COURT: I can't give you anything but what's

9 1 in the record. That's what's in the record. The
2 second question, were inspectors assigned prior to
3 1968 to Bornstein. That's the same question. I can't
4 give you anything but what's in the record. Is that
5 clear? You've got to decide the case on the evidence
6 before you. This man is not being charged with what
7 went on in '68. He's being charged specifically with
8 '73, '74 and '75. You all understand that?

9 JUROR NO. 5: It was credibility was the ques-
10 tion.

11 THE COURT: I see. You can do whatever you wish.
12 I'm not criticizing you. I'm just telling you what's
13 in the record. And the third question is, what is the
14 date of this Exhibit H. I take it that's -- you want
15 to know when this exhibit H was made up. Is that the
16 question?

17 JUROR NO. 5: Yes, your Honor.

18 THE COURT: We don't have that in the record.
19 Again, there is no date on it. The only thing I could
20 say is it was introduced at pages 147 and 148 and the
21 record shows at line 21, the Court saying, "These are
22 statements that the investigators --" in this case it
23 was an Assistant United States Attorney -- his notes --
24 "-- take from prospective witnesses and under the --
25 rules the Government is required to turn them over to

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10 1 defense counsel so that defense counsel knows what the
2 witness is going to say." It was offered in evidence.
3 The only other evidence we may have which may bear on
4 it, if you think it does, was the evidence that we
5 heard today was that the investigation began by July
6 '75, the summer of '75. So that's all we have. Any-
7 thing further you want to know about that? The fourth
8 question is, on Exhibit H, Defendant number 30, were
9 they inspecting Bornstein ten years prior to Exhibit
10 H being drawn up. And counsel have agreed that the
11 answer to that is yes. Is there anything else you
12 wish to know? You have to decide it on what's before
13 you. That's your job. All right.

14 (The following occurred in the absence of the
15 jury.)

16 THE COURT: You want these documents back?

17 JUROR NO. 5: No, sir.

18 THE COURT: All right.

19 (The following occurred in the absence of the
20 jury.)

21 THE COURT: The jury has returned with that
22 document H, document 9, documents 11, document 6 and
23 document 7. The clerk will hold them with Exhibit 4.

24 MR. PRINCE: Can I take the transcript? Thank
25 you.

(Recess taken.)

(Continued on next page.)

CERTIFICATE OF SERVICE

July 13, 1977

I hereby certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Eastern District of New York.

Jonathan Silbermain